

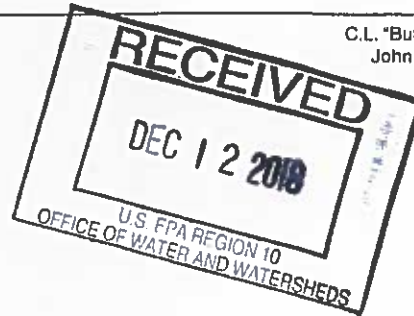


STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
John H. Tippetts, Director

December 7, 2018



Dan Opalski
Office of Water and Watersheds, Region 10
US Environmental Protection Agency
Mail Code: OWW-19
1200 6th Ave., Suite 900
Seattle, WA 98101

Re: Request for applicant status in ESA consultation on site-specific temperature criteria for the Snake River from Hells Canyon Dam to the Salmon River (Rule Docket 58-0102-1102)

Dear Mr. Opalski:

The Idaho Department of Environmental Quality would like to participate in the Endangered Species Act (ESA) consultation regarding Idaho's site-specific temperature criteria for the Snake River from Hells Canyon Dam to the Salmon River (Rule), submitted June 8, 2012. By this letter, DEQ requests EPA acknowledge that DEQ is an "applicant" under the ESA and that the consultation period cannot be extended without notice to and the consent of DEQ.

An applicant is defined by 50 C.F.R. § 402.02 as "any person, as defined in § 3(13) of the Act, who requires formal approval or authorization from a federal agency as a prerequisite to conducting the action." "Person" is defined in § 3(13) of the ESA to include any department, instrumentality, or political subdivision of a state. The DEQ is a person under the ESA that is required to obtain approval from EPA with respect to its water quality standards. Therefore, DEQ is an applicant as defined in the ESA regulations.

The Endangered Species Consultation Handbook (March 1998) provides that the Services do not determine who is an applicant; instead the action agency, in this case EPA, determines applicant status. Endangered Species Handbook at Page 2-12. DEQ requests EPA identify DEQ as an applicant for purposes of ESA consultation regarding the Rule.

It is our understanding that formal consultation on the Rule will begin in early 2019. Please ensure that DEQ receives copies of correspondence regarding the consultation and is informed as to the status of the consultation. As an applicant, DEQ must be provided notice and must consent to any extension of the time lines for formal consultation as provided in 50 C.F.R. § 402.14(e).

I look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Barry N. Burnell".

Barry N. Burnell
Water Quality Division Administrator